

RECEIVED

PATENT

Docket No. 1570-005.11 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TC 2800 MAIL ROOM

In re Application of:) Preliminary
Randy Marchetti) Group Art Unit: 2875
Entitled: "LAMP ASSEMBLY WITH)
DUAL MODE REFLECTOR") Examiner: Unassigned
Filed: October 30, 2001)
Serial No.: 10/040,268)

Assistant Commissioner for Patents
U.S. Patent and Trademark Office
Washington, D.C. 20231

PETITION TO MAKE SPECIAL

Applicant hereby petitions for the captioned patent application to be given special status pursuant to 37 C.F.R. § 1.102 and MPEP § 708.02 on the ground of actual infringement of at least some of the claims of the application. Applicant has recently learned that Osram Sylvania Inc. is marketing and selling a lighting device that infringes at least some of the claims of the application. Applicant therefore petitions for this application to be given special status so that the infringement can be enjoined and the injury caused by it mitigated.

This Petition is accompanied by and is supported by the concurrently-filed Affidavit of Gregg J. Ghelfi, President of Assignee RM Racing, LLC, dated July 1, 2002 (hereinafter the "Ghelfi Aff."), and the Affidavit of Stephen T. Sullivan,

07/10/2002 ANABI1 00000004 10040268

01 FC:122

130.00 OP

counsel for RM Racing, dated July 1, 2002 (hereinafter the "Sullivan Aff."). A check for \$130.00 to cover the Petition fee under 37 C.F.R. § 1.17(h) also has been included.

I. SUMMARY OF THE PRESENT INVENTION

The present invention pertains generally to lighting devices, for example, such as may be used as a headlight or spot light on a vehicle. An automotive headlamp would be an example. A copy of Fig. 1 from the application, which depicts a lamp assembly according to a presently preferred embodiment of the invention, is attached hereto.

The invention as recited in independent claim 1 comprises a lamp assembly, which in turn comprises a reflector. The reflector comprises first and second reflective concave surface regions adjacent to one another. The first reflective concave surface region has a first curvature for directing light emanating from a first focal point adjacent to but spaced apart from the first reflective concave surface region into a near field beam. The second reflective concave surface region comprises a second curvature for directing light emanating from a second focal point adjacent to but spaced apart from the second reflective concave surface region into a far field beam. This second reflective concave surface region may comprise, for example, the high beam portion of a high and low beam automotive headlamp.

A first light source is positioned substantially at the first focal point. This first light source in claim 1 comprises a high intensity discharge light source. A second light source is positioned substantially at the second focal point. The second

comprises a halogen light source. A light-transmissive cover is fitted over the reflector.

Dependent claim 2 recites that the reflector is substantially rounded, and dependent claim 3 recites that the reflector is substantially circular. Dependent claim 4 recites that the first and second reflective concave surface regions are integral with one another, and dependent claim 5 recites that the reflector is a unitary piece. Dependent claim 8 recites that the first light source, i.e., the high intensity discharge light source, comprises a xenon light source. The application includes additional claims depending from claim 1.

The application further includes independent 9, also directed to a lamp assembly, and independent claim 18, directed to a reflector.

II. THE ACCUSED INFRINGING PRODUCT

AND ITS DERIVATION FROM APPLICANT

Applicant has learned that Osram Sylvania Inc. (hereinafter "Sylvania") recently began selling a lighting device referred to and advertised as the Xenarc® HID X6024 Sealed Beam Upgrade Kit (hereinafter the "Accused Infringing Product"). (Ghelfi Aff. at ¶ 4.) This Accused Infringing Product is currently being advertised on the Sylvania Web site. In addition, Mr. Ghelfi purchased a unit of the Accused Infringing Product and has inspected it. (Ghelfi Aff., ¶ 4-5.) Photographs of the unit of the Accused Infringing Product purchased by Mr. Ghelfi are attached to the Ghelfi Aff. and the Sullivan Aff. Based upon this information, Applicant has

confirmed that Sylvania has placed an infringing product on the market and is currently selling it to the public.

Sylvania is aware of assignee RM Racing, and of its patent application, and the infringement is not accidental. RM Racing enlisted the assistance of a third party contractor, ACA Performance, Inc. of Ontario, Canada (hereinafter "ACA"), in developing the tooling for manufacture of RM Racing's commercial embodiment of the invention. (Ghelfi Aff., ¶¶ 2-3.) In undertaking this work, ACA signed an agreement in which it agreed that RM Racing was to retain rights in certain intellectual property and in the tooling created under the agreement. ACA thereafter worked in cooperation with Sylvania to manufacture the Accused Infringing Product, in violation of its agreement with RM Racing. (*Id.*)

Upon learning of ACA's threats to misappropriate RM Racing's intellectual property, RM Racing filed a lawsuit in the District of Arizona, CIV 01-533 PHX RCB, which suit is currently pending. Applicant makes this petition not only to stop the infringement, but to facilitate the resolution of that law suit.

III. APPLICANT'S INFRINGEMENT ANALYSIS

RM Racing and Applicant's counsel have studied the Accused Infringing Product, they have made a rigid comparison of the Accused Infringing Product with the claims of the application, and they have concluded that, in their opinion, at least some of the claims are unquestionably infringed by it. (Ghelfi Aff., ¶¶ 6-7; Sullivan Aff., ¶ 5.) Thus, Applicant believes based upon inquiry and analysis that at least

some of the claims of the pending application are unquestionably being infringed by the Accused Infringing Product.

III. ART RELATING TO THE INVENTION

Applicant has caused a careful and thorough search of the prior art to be made. (Sullivan Aff., ¶¶ 2-3.) More specifically, Applicant caused a search to be made in the records of the U.S. Patent and Trademark Office on the subject matter of the invention as claimed. The search was conducted in Class 362, subclasses 228, 229, 241, 243, 247, 296, 297, 349, 487, 507, 517, 518, and 543; Class 313, subclasses 111, 113, 114, and 115; and Class 315, subclasses 77 and 82. In addition, Applicant has a relatively good knowledge of the pertinent prior art. (Sullivan Aff., ¶ 3.)

Based on these sources, a number of documents have been compiled. Copies of the documents are attached to the Information Disclosure Statement being filed concurrently with the Petition. Applicant of course reserves the right to challenge any given reference as to whether it constitutes "prior art" with respect to the claims of this application, and whether and to what extent any given reference may impact patentability of the claims.

IV. CONCLUSION

In view of the foregoing, Applicant requests that this application be given special status so that the infringement can be promptly enjoined and the corresponding harm immediately addressed. Applicant stands fully ready to assist in advancing the prosecution of this application.

A check for \$130.00 is attached to cover the Petition fee. If there are any other fees or fee amounts due in connection with this Petition or with the prosecution of this application, please charge such fees or amounts to Deposit Account No. 501,324.

Dated: July 2, 2002

Respectfully submitted,

By: 
Stephen T. Sullivan
(Reg. No. 32,444)
SULLIVAN LAW GROUP
5060 North 40th Street, Suite 120
Phoenix, Arizona 85018
Tel: (602) 956-6161
Fax: (602) 956-6262

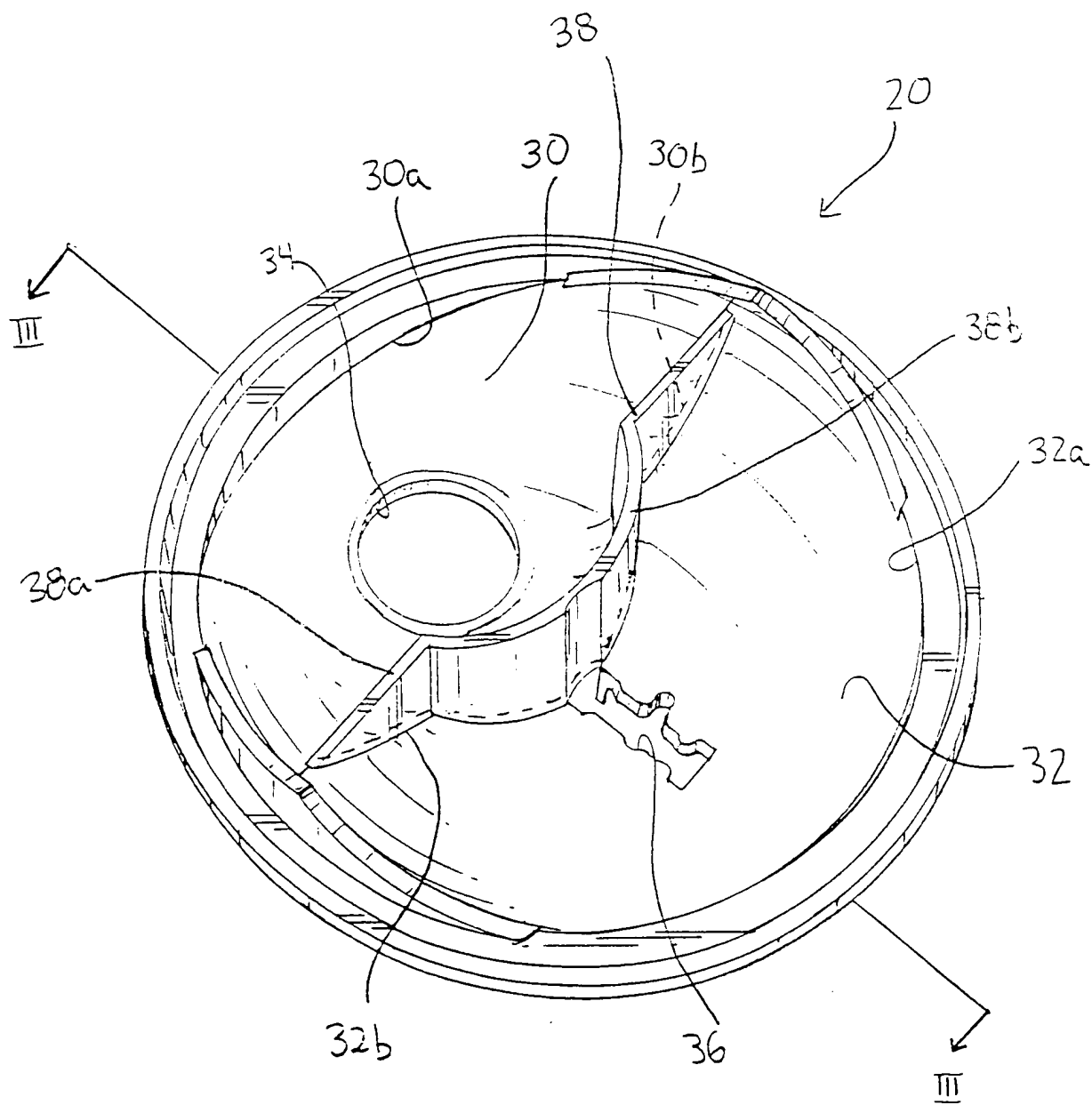
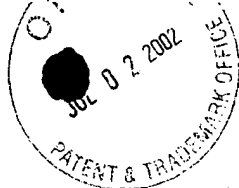


Fig. 1



CERTIFICATE OF EXPRESS MAILING

RECEIVED

Express Mail Mailing Label No. EV 117190624 US JUL 11 2002
Date of Deposit: July 2, 2002 TC 2800 MAIL ROOM
I hereby certify that this Petition and associated fee
are being deposited with the United States Postal
Service "Express Mail Post Office to Addressee"
service under 37 CFR 1.10 on the date indicated above
and is addressed to Assistant Commissioner for
Patents, U.S. Patent and Trademark Office,
Washington, D.C. 20231.

Lisa Mansur